

NOV 22 2004

SCHERING-PLOUGH CORPORATION
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FROM:

Sandy Zaradic, Ph.D., Counsel, Patents

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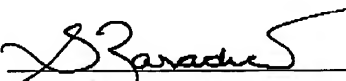
November 22, 2004

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Re: Application No: 10/786,886
Filing Date: 02/25/2004
First Named Inventor: Andrews *et al*
Examiner: Bernhardt, E. B.; Art Unit: 1624
Attorney Docket No.: CD078701

Transmitted herewith are:

- Response Transmittal - 1 page
- Amendment and Response - 6 pages
- Terminal Disclaimer to Obviate a Double Patenting Rejection over a "Prior" Patent - 1 page
- Fee Transmittal form - 1 page **IN DUPLICATE**
- Certificate of Fax Transmission - 1 page
- Fax Cover Sheet - 1 page


SANDY S. ZARADIC, PH.D.
COUNSEL, PATENTS
REGISTRATION NO. 45,997

48419_1.DOC

PHONE: (908) 298-7221

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Attorney Docket No.: CD0787Q1

Application No.: 10/786,886

Filing Date: 02/25/2004

First Named Inventor: Andrews et al.

NOV 22 2004

PTO/SB/07 (08-00)
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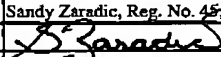
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	10/786,886	
	Filing Date	02/25/2004	
	First Named Inventor	Andrews et al.	
	Art Unit	1624	
	Examiner Name	Bernhardt, Emily B.	
Total Number of Pages in This Submission	12	Attorney Docket Number	CD0787Q1

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input checked="" type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="text"/> Remarks	<input type="checkbox"/> After Allowance communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Cert. of Fax Transmission-1 page; Fax Cover page-1 page
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<h1 style="text-align: center;">FEE TRANSMITTAL</h1> <h2 style="text-align: center;">for FY 2005</h2> <p style="text-align: center;">Effective 10/01/2004, Patent fees are subject to annual revision.</p> <p style="text-align: center;">Applicant claims small entity status. See 37 CFR 1.27</p>		Complete If Known	
		Application Number	10/786,886
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		Art Unit	1624
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TOTAL AMOUNT OF PAYMENT		(\$ 110.00	

METHOD OF PAYMENT (check all that apply) <input type="checkbox"/> Check <input type="checkbox"/> Credit card <input type="checkbox"/> Money Order <input type="checkbox"/> Other <input type="checkbox"/> None <input checked="" type="checkbox"/> Deposit Account: Deposit Account Number: 19-0365 Deposit Account Name: Schering-Plough Corporation The Director is authorized to: (check all that apply) <input checked="" type="checkbox"/> Charge fee(s) indicated below <input checked="" type="checkbox"/> Credit any overpayments <input checked="" type="checkbox"/> Charge any additional fee(s) or any underpayment of fee(s) <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.				FEE CALCULATION (continued) 3. ADDITIONAL FEES <table border="1"> <thead> <tr> <th>Large Entity</th> <th>Small Entity</th> <th>FEE Code (\$)</th> <th>FEE Code (\$)</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td>1051 130</td> <td>2051 65</td> <td>Surcharge - late filing fee or oath</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1052 80</td> <td>2052 25</td> <td>Surcharge - late provisional filing fee or cover sheet</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1053 130</td> <td>1053 130</td> <td>Non-English specification</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1812 2,520</td> <td>1812 2,520</td> <td>For filing a request for ex parte reexamination</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1804 920*</td> <td>1804 920*</td> <td>Requesting publication of SIR prior to Examiner action</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1805 1,840*</td> <td>1805 1,840*</td> <td>Requesting publication of SIR after Examiner action</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1251 110</td> <td>2251 55</td> <td>Extension for reply within first month</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1252 430</td> <td>2252 215</td> <td>Extension for reply within second month</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1253 980</td> <td>2253 480</td> <td>Extension for reply within third month</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1254 1,530</td> <td>2254 765</td> <td>Extension for reply within fourth month</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1255 2,080</td> <td>2255 1,040</td> <td>Extension for reply within fifth month</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1401 340</td> <td>2401 170</td> <td>Notice of Appeal</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1402 340</td> <td>2402 170</td> <td>Filing a brief in support of an appeal</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1403 300</td> <td>2403 150</td> <td>Request for oral hearing</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1451 1,510</td> <td>1451 1,510</td> <td>Petition to institute a public use proceeding</td> <td></td> </tr> <tr> <td></td> <td></td> <td>1452 110</td> <td>2452 55</td> <td>Petition to revive - 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SUBMITTED BY Name (Print/Type): Sandy Zaradic Signature: <i>S. Zaradic</i>		Registration No. 45,997 Telephone 908-298-7221	
		Date: November 22, 2004	

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DUPLICATE

PTO/SB/17 (10-04)

Approved for use through 07/31/2006. OMB 0651-0032
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FEE TRANSMITTAL for FY 2005

Effective 10/10/2004. Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT

(\$ 110.00

Complete if Known

Application Number	10/786,886
Filing Date	02/25/2004
First Named Inventor	Andrews et al.
Examiner Name	Bernhardt, Emily B.
Art Unit	1624
Attorney Docket No.	CD0787Q1

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None
☒ Deposit AccountDeposit Account Number
Deposit Account Name

19-0365

Schering-Plough Corporation

The Director is authorized to (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001 790	2001 395	Utility filing fee	
1002 350	2002 175	Design filing fee	
1003 850	2003 275	Plant filing fee	
1004 790	2004 395	Reissue filing fee	
1005 150	2005 80	Provisional filing fee	
SUBTOTAL (i) (\$)			

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	-20*	=	X	Fee from below	Fee Paid
Independent Claims		-3-	=	X	
Multiple Dependent					

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 88	2201 44	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 88	2204 44	Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (j) (\$)		

* or number previously paid, if greater. For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES


Large Entity Small Entity

FEE Code (\$)	FEE Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 60	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,620	1812 2,620	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1806 1,840*	1806 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 430	2252 215	Extension for reply within second month	
1253 980	2253 490	Extension for reply within third month	
1254 1,330	2254 765	Extension for reply within fourth month	
1255 2,080	2255 1,040	Extension for reply within fifth month	
1401 340	2401 170	Notice of Appeal	
1402 340	2402 170	Filing a brief in support of an appeal	
1403 300	2403 150	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,370	2501 685	Utility issue fee (or reissue)	
1502 490	2502 245	Design issue fee	
1503 660	2503 330	Plant issue fee	
1480 130	1480 130	Petitions to the Commissioner	
1807 60	1807 60	Processing fee under 37 CFR 1.17(q)	
1808 180	1808 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 790	2810 395	For each additional invention to be examined (37 CFR 1.129(b))	
1801 790	2801 395	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	
Other fee (specify) Terminal Disclaimer over Prior Patent			110.00

* Reduced by Basic Filing Fee Paid

SUBTOTAL (k) (\$ 110.00

SUBMITTED BY

Name (Print/Type) Sandy Zaradic
Signature 

Registration No. (Assigned Agent) 45,997

(Complete, if applicable)

Telephone 908-298-7221

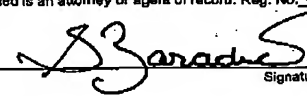
Date November 22, 2004

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TERMINAL DISCLAIMER TO OBIVATE A DOUBLE PATENTING REJECTION OVER A "PRIOR" PATENT		Docket Number (Optional) CD0787Q1
In re Application of: <u>Andrews et al.</u>		
Application No.: <u>10/786,886</u>		
Filed: <u>02/25/2004</u>		
For: <u>Crystalline antifungal polymorph</u>		
<p>The owner, <u>Schering Corporation</u> of <u>100</u> percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. <u>6,713,481</u> as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.</p> <p>In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer." In the event that said prior patent later:</p> <ul style="list-style-type: none"> expires for failure to pay a maintenance fee; is held unenforceable; is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321; has all claims canceled by a reexamination certificate; is released; or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer. 		
Check either box 1 or 2 below, if appropriate.		
<p>1. <input type="checkbox"/> For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.</p> <p>I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.</p>		
<p>2. <input checked="" type="checkbox"/> The undersigned is an attorney or agent of record. Reg. No. <u>45,997</u></p> <p style="text-align: center;"> Signature</p> <p style="text-align: right;">11/22/04 Date</p> <p><u>Sandy Zaradic</u> Typed or printed name</p> <p style="text-align: right;"><u>908-298-7221</u> Telephone Number</p>		
<p><input checked="" type="checkbox"/> Terminal disclaimer fee under 37 CFR 1.20(d) included.</p> <p>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</p> <p>* Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTC/S13/B6 may be used for making this certification. See MPEP § 324.</p>		

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